

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

	:	CIVIL ACTION NUMBER:
YASMIN FAHEEM and 24/7 FOOD MART,	:	24-cv-08798
LLC,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	MOTION HEARING
CITY OF ATLANTIC CITY, et al.,	:	
Defendants.	:	
	:	

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
September 4, 2024
Commencing at 2:06 p.m.

B E F O R E: **THE HONORABLE EDWARD S. KIEL,**
 UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

KING MOENCH & COLLINS, LLP
BY: MATTHEW C. MOENCH, ESQUIRE
51 Gibraltar Drive, Suite 2F
Morris Plains, New Jersey 07950
For the Plaintiffs

LAW OFFICES OF MICHAEL A. ARMSTRONG
BY: CRISTAL HOLMES-BOWIE, ESQUIRE
79 Mainbridge Lane
Willingboro, New Jersey 08046

Ann Marie Mitchell, CRR, RDR, CCR, Official Court Reporter
AnnMarie_Mitchell@njdcourts.gov
(856) 576-7018

Proceedings recorded by mechanical stenography; transcript
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1 (PROCEEDINGS held in open court before The Honorable
2 EDWARD S. KIEL at 2:06 p.m.)

3 THE COURT: Please be seated. Thank you.

4 Good afternoon, everyone. We are on the record in
5 the matter of Faheem v. City of Atlantic City. It's case
6 24-cv-08798.

7 First the appearance on behalf of plaintiffs.

8 MR. MOENCH: Good morning, Your Honor. Matthew
9 Moench from the firm of King Moench & Collins on behalf of the
10 plaintiffs.

11 THE COURT: Okay. And on behalf of the defendants.

12 MS. HOLMES-BOWIE: Good afternoon, Your Honor.
13 Cristal Holmes-Bowie of Michael A. Armstrong & Associates on
14 behalf of the defendants, the City of Atlantic City and Dale
15 Finch.

16 THE COURT: So we're here for an application for an
17 order to show cause with temporary restraints.

18 I put this on as soon as I could and asked the
19 defendants to file their response, which they did at a little
20 past 4:00 yesterday.

21 Let me give you the lay of the land and tell you what
22 I'm thinking, and then I'll hear from the parties.

23 There's been a lot that's happened since the
24 application was filed, and the circumstance that has happened
25 that really puts me in a position where I don't know what I

1 can do today is that there was a hearing last Friday at 2:00.

2 Let me first ask, is anybody intending to put on any
3 witnesses today?

4 MS. HOLMES-BOWIE: I do not have any witnesses,
5 Judge.

6 MR. MOENCH: Judge, if Your Honor had questions, this
7 is a family business, so one of the store managers is here,
8 could testify.

9 THE COURT: Okay.

10 MR. MOENCH: I don't know that -- based on the legal
11 issues that are currently present that it's necessary, but --

12 THE COURT: Okay. Understood.

13 So procedurally where we are is that there was an
14 order to show cause with temporary restraints requested, filed
15 on Thursday, and then there was a hearing on Friday.

16 And I believe that the application for the order to
17 show cause was to require a recision of the suspension pending
18 a hearing. And the argument was that a summary revocation or
19 a summary suspension of the license to sell, if it was
20 unconstitutional and, therefore, there should be a restraint
21 placed on the continuing of that suspension.

22 But where do we stand now?

23 Let me hear from plaintiff first. It sounds like you
24 got your hearing, but I don't know anything about the hearing
25 other than a two-page decision.

1 MR. MOENCH: Yes, Judge. So we did have a hearing.
2 The hearing was conducted -- I guess it was Thursday or
3 Friday, I don't remember specifically.

4 THE COURT: I think it was Friday.

5 MR. MOENCH: That could be right, Judge.

6 So from that aspect, Your Honor is right. There was
7 a hearing.

8 Now, the result of that hearing was that the license
9 is suspended indefinitely pending outcome of criminal charges,
10 which we have issues with the result, but --

11 THE COURT: I have issues with that, but --

12 MR. MOENCH: But taking it one step at a time.

13 The hearing itself, you know, occurred. It occurred
14 overall within a three-day window. So we still believe and
15 are advocating today that due process requires notice and
16 opportunity to be heard, but the opportunity to be heard has
17 to be reasonable. We have to have time to prepare. And I
18 know there's a whole lot of case law, Judge, that talks about
19 exactly how formal does a hearing need to be, and the process
20 here doesn't have to be like we are in front of a court. I
21 understand that.

22 In this instance we had no opportunity to OPRA
23 documents. We had no opportunity to gain information.
24 There's -- there's a lot of comments in some of the charges
25 and the substance of this.

1 But other than the documents, the charging documents
2 themselves, we have no ability to -- had no ability to get any
3 more information to that.

4 And the hearing --

5 THE COURT: So that at this point, it's not that you
6 didn't have a hearing, it's the process of the hearing itself
7 that you may object to.

8 MR. MOENCH: Where we are today is we've had a
9 hearing. We object to the process of the hearing. We think
10 that hearing should have occurred, you know, more of -- ten
11 days, more of a reasonable time to prepare. We believe that
12 the information that we were provided was insufficient to
13 properly prepare. And then the actual current status, that
14 the license is suspended indefinitely pending results of
15 outcomes of criminal charges which may or may not even be
16 related to this, but that's where we are. So right now --

17 THE COURT: Is there a further proceeding that's
18 scheduled?

19 MR. MOENCH: No, Judge. Right now the way it's been
20 left is that the license is suspended, there are I'll say two
21 sets of charges pending in municipal -- or criminal charges.
22 One is charges against the court -- the store clerk, which are
23 several drug-related charges.

24 I have no information, Judge, other than knowing that
25 that person is a store clerk. The only document I have is

1 what's been presented to Your Honor that show the charges. I
2 don't know what connection the alleged activities of that
3 store clerk have to the store itself, or --

4 THE COURT: Is the store clerk still employed?

5 MR. MOENCH: No, Judge.

6 THE COURT: Okay.

7 MR. MOENCH: I don't know whether any of those
8 activities took place at the store. I don't have that
9 information.

10 THE COURT: You don't know what time it happened,
11 what he was selling?

12 MR. MOENCH: I know what the charges are, but I don't
13 know -- other than the fact that he's employed there, we've
14 asked for body cam footage, we've asked for the reports, all
15 the other stuff to know what connection that store clerk's
16 activity has on the store, assuming he's guilty, because these
17 are just charges.

18 So the problem there, Judge, is that they are serious
19 charges that could take a year to adjudicate, depending on how
20 that particular person gets a lawyer, works through the
21 justice system.

22 Right now -- then there's the other two sets of
23 charges, Judge, that relate to the store -- the owner and the
24 essential manager of the store are cigarette-related charges.
25 It has to do with allegations in municipal court that a

1 certificate wasn't held up --

2 THE COURT: With the cigarettes and I think the young
3 people call them loosies.

4 MR. MOENCH: That's it. I've learned that term now,
5 Judge. I didn't know it before.

6 THE COURT: I don't think Atlantic City -- well, I'll
7 hear from Atlantic City in a second, but I don't think
8 Atlantic City is taking the position that they're going to
9 shut down the store for a citation about selling loose
10 cigarettes. It's about the drug charges.

11 MR. MOENCH: I won't speak for them. I think they
12 were --

13 THE COURT: I would be surprised if they stood up and
14 told me they were going to close down the store for that.

15 MR. MOENCH: But assuming Your Honor's correct and
16 that's the position, we're now faced with a situation where
17 the store is going to be shut down for an indefinite time
18 period pending the results of whatever occurs in court with
19 the clerk.

20 I have no idea, there's no allegations or information
21 currently presented that connect the clerk's activities with
22 the store ownership or operation.

23 And so now we are now at the mercy of a third party,
24 not an owner, and the criminal justice system between being
25 able to reopen the store. And meanwhile, it's not just -- if

1 this was going to be a week, we'd come back and we could get
2 damages. This is a real problem for us, in terms of how do we
3 proceed? There's no more hearings.

4 THE COURT: That's my question to you, how do we
5 proceed from here.

6 And I'm willing to have another hearing, have further
7 briefing on it and further evidence presented to me.

8 I don't know what happened at the hearing, and you're
9 telling me that it was not procedurally --

10 MR. MOENCH: It was --

11 THE COURT: Hold on a second.

12 MR. MOENCH: Sorry.

13 THE COURT: It wasn't procedurally right.
14 Was there a transcript of the hearing?

15 MR. MOENCH: No, Judge. It was done by Zoom. The
16 director of mercantile licensing, Dale Finch, who is the one
17 who issued the suspension initially, was present. He had the
18 police officer there or officers, I don't remember if it was
19 one or multiple. And a city attorney was there. My office
20 was represented with the clients. And the discussion was
21 relatively informal. They just said, these are the charges,
22 the ones we just talked about, the drug charge with the clerk
23 and the cigarette charges.

24 They said that they would revoke the suspension if my
25 client agreed to let the Atlantic City Police Department hook

1 into their camera system so they could have a live feed into
2 the business whenever they wanted. My clients have a separate
3 set of issues with that request or demand to have the, you
4 know, police department be able to --

5 THE COURT: Sounds like big brother.

6 MR. MOENCH: Judge, that was my -- but my client is
7 desperate enough that we did ask a bunch of questions about
8 how practically that would work.

9 But at the end of the day, that was what was
10 presented. We -- and so at the hearing, in front of the same
11 person, as opposed to in front of, say, the city counsel that
12 would get to vote on it at a public hearing. It was in front
13 of the same administrative person.

14 The decision that Your Honor has that was attached to
15 the submission yesterday, that decision of hearing, that was
16 the first time we received that, was as part of this court
17 submission. So we saw it, you know, sometime yesterday
18 evening when looking at the papers.

19 And one of the other issues that we have from a
20 process standpoint with the hearing is that this decision
21 references, you know, other incidents in the past, stuff that
22 was never part of the original suspension. It goes beyond
23 that.

24 And, once again, if they're using those as a basis to
25 revoke or take action against a license, I did get from

1 Atlantic City some of the complaints.

2 THE COURT: Let me ask some questions of Atlantic
3 City.

4 MR. MOENCH: Yes, Judge.

5 THE COURT: I know where you stand. And you've
6 answered my questions about the process that occurred on
7 Thursday or Friday.

8 MR. MOENCH: Yes, Judge.

9 THE COURT: But I have a bunch of questions for the
10 City of Atlantic City.

11 Is it Ms. Holmes-Bowie or just Bowie?

12 MS. HOLMES-BOWIE: Yes, Holmes-Bowie.

13 THE COURT: Under what statutory, regulatory or other
14 law is Atlantic City permitted to summarily suspend a
15 merchant's license?

16 MS. HOLMES-BOWIE: Well, Your Honor, I believe that
17 it's under the police powers that are provided to the
18 municipality by the state legislature. I believe I cited some
19 of the instances, some of --

20 THE COURT: Police powers have to -- police powers
21 generally to take away property rights, which this is, has to
22 usually come with some due process rights. And I'm asking you
23 summarily to do it.

24 MS. HOLMES-BOWIE: Well, Judge, I think that the
25 reason that it's summarily is it has to do with the

1 dangerousness of the situation, the health and safety to the
2 community. And that's the reason why they moved so quickly
3 with the suspension.

4 THE COURT: You talked about -- you didn't quite say
5 it in your brief, but I hear what you're saying is that there
6 was some exigency to the situation, that the public safety was
7 at risk.

8 MS. HOLMES-BOWIE: Yes, Your Honor. In this
9 situation, counsel mentioned that this is a store clerk, yes,
10 this is an employee who allegedly is dealing drugs from the
11 location there in the store. Whether he has a relationship
12 with the owners or not, there's a safety issue.

13 THE COURT: So as I understand the authority that
14 you're going under, that a municipality has police powers and
15 that police power includes the right to rescind a right to
16 operate a business. And they can do that, based upon -- what
17 I understand you're saying, based upon exigent circumstances,
18 emergent circumstances for the health and safety of the
19 community?

20 MS. HOLMES-BOWIE: That's correct, Judge.

21 THE COURT: Okay. That's not quite what's in your
22 papers.

23 Well, let me ask you, what standards should I apply
24 in determining whether the Department of Licensing &
25 Inspection decision was correct? Would that be an abuse of

1 discretion? Do you have any idea about that?

2 MS. HOLMES-BOWIE: Well, Judge, if it's an abuse of
3 discretion, I think that they were within their rights to
4 impose the suspension.

5 There are other facts that are associated with this.
6 For example, the mercantile licensing, it basically -- it
7 has -- it expired. It doesn't even exist, quite frankly, at
8 this point in time.

9 THE COURT: What do you mean, it expired?

10 MS. HOLMES-BOWIE: The mercantile license expired in
11 July. There's been no renewal.

12 THE COURT: So why did you need to --

13 MS. HOLMES-BOWIE: Counsel does not even --

14 THE COURT: Why did you need to suspend it? Why
15 didn't you just tell them that it's not renewed?

16 MS. HOLMES-BOWIE: Well, the reason that they took
17 this extra step is because of the criminal activity and
18 because of the ongoing criminal activity.

19 THE COURT: Well, I think there's something else
20 going on. You talk about exigent circumstances. And the
21 decision cites to a criminal charge that was levied on August
22 16th against a clerk. Right?

23 MS. HOLMES-BOWIE: Yes.

24 THE COURT: Right? That's what the decision says.

25 But the suspension didn't happen until August 29th,

1 which is -- I'm sorry, when was the suspension?

2 MR. MOENCH: August 26th, Judge.

3 THE COURT: August 26th. So there's this grave
4 danger to the community, and this person has been arrested.
5 And you can't have a hearing within ten days of the person's
6 arrest and say, hey, come on in, we want to talk to you and we
7 want to give you the evidence that we have and why your
8 license should be suspended? It was that emergent that the
9 town had to wait ten days to suspend this person's license?

10 MS. HOLMES-BOWIE: My understanding is that the
11 arrest took place in closer time.

12 THE COURT: It says August 16th on the decision from
13 the City of Atlantic City.

14 Is that right, Mr. Moench?

15 MR. MOENCH: Judge, I don't know.

16 THE COURT: Because you haven't been provided --

17 MR. MOENCH: I don't know. I have what's provided
18 there, Judge.

19 THE COURT: Also, I did note that I didn't get the
20 police report for that August 16th arrest with your papers. I
21 got all the other reports.

22 Any reason you didn't include the August 16th one?

23 MS. HOLMES-BOWIE: I didn't have it at the time that
24 I submitted the papers.

25 THE COURT: Well, let me ask you, would ten days have

1 been enough to put together a hearing where you provide notice
2 and then you provide whatever information and evidence that
3 you have to the other side and have them have an opportunity
4 to prepare for that hearing?

5 MS. HOLMES-BOWIE: I think that that's sufficient
6 time.

7 THE COURT: Yes. It sounds sufficient.

8 MS. HOLMES-BOWIE: I believe the reason for having
9 the hearing on a more expedited basis had more to do with the
10 fact of this hearing, to make sure it took place before this
11 hearing occurred.

12 THE COURT: Yes. Because he filed an order to show
13 cause. That's why you got on your horse and started working
14 hard. Right? To get the hearing in in time for this hearing?

15 MS. HOLMES-BOWIE: That's -- I understand that they
16 wanted to have it on an expedited basis.

17 THE COURT: Well --

18 MS. HOLMES-BOWIE: And they offered it. They don't
19 have to request it. The City can have it, and they notified
20 them.

21 THE COURT: Let me ask you a totally different
22 question.

23 If the -- well, was the license suspended pursuant to
24 some provision of the code of Atlantic City?

25 MS. HOLMES-BOWIE: It was suspended pursuant to their

1 code.

2 THE COURT: And the code that was provided, I have it
3 here, was 170-13(A). Right?

4 MS. HOLMES-BOWIE: Yes.

5 THE COURT: And that says that the Mercantile
6 Licensing Division of Atlantic City, based upon good cause,
7 can suspend, cancel or revoke a license, good cause for
8 suspension, and it lists a few things. It doesn't provide for
9 any process.

10 Do you see any problem with this code permitting the
11 Mercantile Licensing Division of Atlantic City to have really
12 unfettered discretion as to what they think is good cause for
13 suspension without any process being in there, like we're
14 going to give you ten days' notice and we're going to have a
15 hearing?

16 MS. HOLMES-BOWIE: Well, I understand what Your Honor
17 is saying. I don't know what the entire -- what the code --
18 the entire code of Atlantic City says with respect to
19 hearings, yeah.

20 THE COURT: Well, I took a pretty good look at it. I
21 took a pretty good look at it, at Section 170. I presume
22 everything about licenses is in there. And the only
23 opportunity to be heard under this statute is after a decision
24 is rendered, it says that the licensee can then file an appeal
25 within 30 days.

1 Does that sound constitutional to you?

2 MS. HOLMES-BOWIE: Well, it may not be -- it doesn't
3 sound constitutional, but I think that there are also
4 circumstances where the City should be able to act.

5 THE COURT: Right.

6 MS. HOLMES-BOWIE: In the case of where the citizens'
7 safety is at risk, where there is criminal activity that is
8 ongoing, and there's a history of the -- and not just minor
9 criminal activity, like we're talking about loosies, there's
10 been significant criminal activity. There have been other
11 drug cases. There have been homicides at --

12 THE COURT: I read every single -- I read everything
13 that you gave to me, and the police reports that you gave to
14 me about drug activity says -- let me quote for you what every
15 police report seems to say.

16 I'm looking at ECF Number 7, page 13. It's a police
17 report on November 17, 2023.

18 "The area in and around the aforementioned location
19 is well known for its heightened levels of criminal activity
20 and quality of life complaints. These crimes and complaints
21 can range from, but are not restricted to, public
22 intoxication/urination, drug trafficking and violent crimes
23 (homicides, shootings, and assaults). Additionally, a large
24 number of arrests for narcotic related offenses have/are made
25 in and around this area."

1 So if this store is in that area and there's drug
2 arrests in that area, how come -- are there other stores that
3 have been shut down because of drug activity in that area?

4 MS. HOLMES-BOWIE: I don't have that information,
5 Judge.

6 THE COURT: Isn't that important to know?

7 MS. HOLMES-BOWIE: I understand.

8 THE COURT: You're going to have to defend the
9 actions of Atlantic City. And you have a statute that says
10 maybe it's unconstitutional, maybe not.

11 If the code itself is unconstitutional in the due
12 process that it provides, is a suspension in this case also
13 unconstitutional? Would that lead to a logical conclusion?

14 MS. HOLMES-BOWIE: I don't know that I agree with
15 that, Judge. I understand what you're saying.

16 THE COURT: So I asked you before, under what law,
17 under what code was the suspension done?

18 MS. HOLMES-BOWIE: As far as I know --

19 THE COURT: It was 170. Right?

20 MS. HOLMES-BOWIE: Yes. That's my understanding.

21 THE COURT: If 170 is unconstitutional because it
22 doesn't provide due process, it's not clear -- and I'll get to
23 the clear portion in a second -- is the suspension itself
24 unconstitutional? You're saying maybe not?

25 MS. HOLMES-BOWIE: Well, again, it's -- I understand

1 the question, but I believe that there are other exigent
2 circumstances for the suspension for the activity.

3 THE COURT: So how is a merchant supposed to know
4 when they get a notice of suspension of what to do in order to
5 try to have that suspension, that summary suspension
6 overturned and have a hearing?

7 MS. HOLMES-BOWIE: Well, Judge, I think that they --
8 basically the same as what happened here, which was to get in
9 contact with the --

10 THE COURT: That's not the way it works. Right?
11 That's not the way it works.

12 MS. HOLMES-BOWIE: I understand.

13 THE COURT: You as the City has the authority, the
14 legal law enforcement authority of the City, have to tell its
15 citizens and its merchants what the law is. Right?

16 MS. HOLMES-BOWIE: Yes.

17 THE COURT: Okay. Also, nobody briefed the issue,
18 and I think that we can come to a head on the issue as to
19 whether the statute itself is unconstitutional or the code
20 itself is unconstitutional. I know that it's in the complaint
21 that you want that declaration, but procedurally we're not
22 there. Procedurally we are at a point where you're asking for
23 a TRO. And as I said, I would appreciate more information on
24 the TRO and then we'll talk about where we're going to go on
25 that.

1 Let me ask you about other portions of the code,
2 ma'am.

3 It says, "Good cause for suspension, cancellation or
4 revocation shall include, but is not limited to: The
5 existence of unsanitary conditions, noise, disturbances or
6 other conditions at, near, or in the premises which cause or
7 tend to create a public or private nuisance which injuriously
8 affects the public health, safety or welfare of the citizens
9 of the City of Atlantic City."

10 So I said that before, that the police have
11 acknowledged this is a high-crime area. And so this provision
12 seems to say that if there is that kind of activity near the
13 premises, that that's good cause.

14 What do you think about that?

15 MS. HOLMES-BOWIE: Well, I understand that it's
16 saying near, but in this case it's within the facility, within
17 the facility that is licensed.

18 THE COURT: Right. That's an application of the
19 code. We're talking about how the code is written.

20 MS. HOLMES-BOWIE: I understand.

21 THE COURT: It gives really a lot of discretion to
22 the Mercantile Licensing Division to do what they want. If
23 they think, hey, there's drug dealing going on around this
24 store and we feel like closing them down, this code permits us
25 to summarily, summarily without a hearing, close them down ten

1 days later after the offense.

2 I don't know. It was a very long time ago that I
3 went to law school, but that doesn't sound like due process to
4 me.

5 And we can talk about how we're going to proceed on
6 the case, but my suggestion to you, Ms. Holmes-Bowie, is you
7 go back to your clients and you talk about our conversation
8 today, and maybe we can have a further discussion later about
9 the statute.

10 I'm going to permit further briefing and advise me
11 what happened, but I'm going to do it relatively quickly.

12 Let me hear from you, Mr. Moench, there was a mention
13 that the license itself had expired.

14 MR. MOENCH: Yes, Judge. So my understanding is that
15 there's an electronic portal for applying for your renewal.

16 THE COURT: Okay.

17 MR. MOENCH: This license happens to come up I think,
18 based on the one that was provided to us, last year's license
19 was up I think July 31st of this year.

20 That my clients have applied through the online
21 portal and that it is still pending -- my understanding is
22 other licenses are as well, but I don't have -- that's the
23 information that was provided to me by my clients.

24 Other than the screenshot that they sent me showing
25 that they had applied and it's pending, I don't have any more

1 information in terms of --

2 THE COURT: Ms. Holmes-Bowie, any idea? Plaintiffs'
3 counsel says that plaintiff applied for it, it went on the
4 portal by July 31st. I do think that's when licenses are
5 renewed, applications are put in in New Jersey.

6 MS. HOLMES-BOWIE: I have no information other than
7 that the license expired on July 31st. I don't have any
8 information in terms of whether there is an application
9 pending or whether they submitted an application. I don't
10 have any of that information. That's new to me.

11 THE COURT: Well, to me it sounds like that the town
12 thought that it was in effect; otherwise, they wouldn't have
13 issued a suspension. Right?

14 You're going to have to defend this code.

15 MS. HOLMES-BOWIE: I understand that, yes.

16 THE COURT: You're going to have to defend this code.
17 And if -- well, I'll leave it at that.

18 How would you like to proceed, sir?

19 MR. MOENCH: Yes, Judge. So just a few very brief
20 things.

21 I want to point out, counsel had mentioned about, you
22 know, that the clerk -- the alleged drug activity from the
23 clerk was at the store location.

24 I just want to point out that the complaint -- the
25 only information I have is the complaint against the store

1 clerk makes no reference to drug activity at the store. I'm
2 not saying that is or isn't true. I'm just saying that the
3 only complaint that I have which we attached to our complaint
4 and motion was just simply that this person was arrested for a
5 variety of substances. It has no reference to saying out of
6 the store, at the store. I have, you know --

7 THE COURT: That's why I thought it was interesting
8 that the police report from that arrest was not attached.

9 MR. MOENCH: Right. So I can't defend that issue,
10 which is part of the problem.

11 Counsel mentioned about having the hearing quickly.

12 Well, when you're already suspended, it's -- what are
13 your options? Not have a hearing and you're suspended
14 indefinitely, or I come before Your Honor and say, Judge, we
15 haven't had a hearing, and counsel says, we offered a hearing,
16 and Your Honor says, you know, why didn't you have one.

17 So the other thing --

18 THE COURT: Hold on. And I understand that.

19 MR. MOENCH: Yeah.

20 THE COURT: That every day that this store is closed
21 is a problem to your client.

22 But procedurally where we are is an application for a
23 TRO that says that he wasn't provided due process. And now
24 we've had a hearing, which may be due process or not, but
25 we're at a different procedural standpoint where you have to

1 tell me whether -- you need to tell me whether you need
2 something based upon that hearing or something was wrong with
3 that hearing. And if you want to move now, I'll certainly
4 give you the opportunity to move as to whether this ordinance
5 itself is constitutional or not.

6 MR. MOENCH: Yes, Judge. On both fronts. Right now
7 the store is shut down indefinitely. So we're asking for
8 relief -- we'd ask the Court for relief from both the hearing
9 itself being procedurally deficient. It was there was but it
10 was on short notice without the information necessary to have
11 a meaningful opportunity to be heard.

12 And, Your Honor, on the issue of the statute itself
13 being unconstitutional on its face, the statute -- counsel
14 mentioned it in her brief. It's NJSA 40:52-1(J). That is the
15 general statutory provision which allows municipalities to
16 license entities.

17 What is not cited there is 40:52-2.

18 THE COURT: What's that?

19 MR. MOENCH: NJSA 40:52-2 specifically says that when
20 a license is issued pursuant to 52-1, a municipality may take
21 action, and it specifically says, upon notice and opportunity
22 to be heard.

23 So the very statutory scheme which allows a
24 municipality to license specifically says by New Jersey law
25 that if you want to take action against a license, it has to

1 be on notice and pursuant to be heard.

2 If you search Atlantic City's Municipal Code, and you
3 search as I've done it, I have it here, I can give you a
4 number of provisions, there's other licensing provisions
5 throughout Atlantic City that -- other different types of
6 licenses and things like that where the ordinance provisions
7 specifically say, we might take action against a boardwalk
8 entertainer upon notice and opportunity to be heard. We might
9 take action against a secondhand store, you know, a pawn shop,
10 upon notice and opportunity to be heard.

11 So Atlantic City has other provisions and other
12 licenses that conform, at least on the surface, at least on
13 the face of it, with the statute that gives them the authority
14 to do it and conforms on the face of it with constitutional
15 due process. How it's applied might be a separate issue, but
16 at least facially.

17 Here this provision has zero notice and opportunity
18 to be heard and actually specifically says in the body of the
19 ordinance that your opportunity to be heard is after action is
20 taken.

21 So this Court on that alone should invalidate the
22 proceeding which occurred pursuant to an unconstitutional
23 statute, and the store should be reopened until Atlantic City
24 fixes its ordinance and comes up with a constitutional scheme.
25 And then if they decide to take further action pursuant to a

1 constitutional scheme, we can then debate the merits of
2 whatever action they do or don't take.

3 THE COURT: I understand. Understood.

4 Let me ask you one other question that came to mind.
5 And I asked you what standard to apply on a decision. And I'm
6 scratching my head a bit.

7 What logic is there in requiring the store to wait
8 until the criminal charges against a third party -- I
9 understand that it may have been a clerk -- to wait until
10 those charges are resolved before re-looking at this thing?

11 MS. HOLMES-BOWIE: I don't know that that was --
12 well, two things.

13 THE COURT: It says -- and let me read you.

14 "Upon a decision from the criminal court the issue of
15 the removal of a mercantile license will be re-visited and a
16 determination will be made as to either continue revocation or
17 allow renewal of the mercantile license."

18 Why would that be contingent upon somebody else's
19 criminal case?

20 MS. HOLMES-BOWIE: Well, Judge, I don't know that
21 it's contingent upon that individual's criminal case. It may
22 also be contingent upon the other --

23 THE COURT: The loosies?

24 MS. HOLMES-BOWIE: That's a possibility as well. I
25 don't know that that's -- that the case involving the clerk is

1 the one that that references. And I don't have any
2 information from that indicating that.

3 THE COURT: Shouldn't --

4 MS. HOLMES-BOWIE: And obviously I know that those
5 cases would take quite a while to work their way through the
6 system, so --

7 THE COURT: Maybe you should ask for a clarification
8 on that. I mean, to say that a licensee has to wait for the
9 resolution of a criminal case of its former clerk before it
10 can even be reconsidered for reinstatement of its license
11 seems a little odd and maybe arbitrary and capricious. Right?
12 I don't know how they're related. If it's just related to the
13 loose cigarettes, then I'm sure that's something a fine can be
14 paid and off we go.

15 I would suggest -- go ahead.

16 MR. MOENCH: I'm sorry, Judge. I don't mean to be
17 over --

18 THE COURT: Go ahead.

19 MR. MOENCH: I want to point out the decision that's
20 attached at Exhibit A, paragraph 1 just talks about the
21 charges against the clerk.

22 The entire decision upon which this indefinite
23 suspension is based makes zero mention, doesn't even note the
24 cigarette violations or any violations against the store owner
25 or family member. This suspension based on this exhibit and

1 the decision dated September 3rd is based solely upon the
2 charges against the clerk which they list out there, and then
3 they list, you know, other stuff that occurred in the past.

4 THE COURT: Let me ask one more question to
5 Ms. Holmes-Bowie.

6 MS. HOLMES-BOWIE: Uh-huh.

7 THE COURT: Do you know anything about this arrest,
8 this August 16th arrest, who it was?

9 MS. HOLMES-BOWIE: In terms of who was arrested?

10 THE COURT: Yes.

11 MS. HOLMES-BOWIE: I understand it to be the store
12 clerk who was working in the store and --

13 THE COURT: And it was drugs being sold in the store?

14 MS. HOLMES-BOWIE: In the store by the clerk.

15 THE COURT: Where did you get that information from?

16 MS. HOLMES-BOWIE: From the City's officials.

17 THE COURT: The City's --

18 MS. HOLMES-BOWIE: The City officials.

19 THE COURT: Which City official?

20 MS. HOLMES-BOWIE: The City attorney.

21 THE COURT: The City attorney?

22 MS. HOLMES-BOWIE: One of the City attorneys, yes.

23 THE COURT: Any reason that you didn't attach that
24 police report to here?

25 MS. HOLMES-BOWIE: No, Judge. I just did not have

1 it. And honestly, I didn't recall that I hadn't attached it
2 until today. So I didn't attempt to supplement, but I can.

3 THE COURT: Any reason you can't turn over to
4 plaintiff's counsel by tomorrow any documents that you have
5 that support this -- that supports this suspension?

6 MS. HOLMES-BOWIE: Well, I can provide the -- well,
7 the police reports that can be released, that would be public
8 information. The only concern I think that the City would
9 have is in terms of, you know, prosecution --

10 THE COURT: I'm sorry, I couldn't hear you there.

11 MS. HOLMES-BOWIE: I'm sorry, of any prosecution of
12 that particular matter.

13 So I know that the information that's on -- that's
14 there with the complaint, any other information that would be
15 public in the police reports, yes, I can turn that over.

16 THE COURT: Well, I think Mr. Moench when he first
17 got into the case asked the City for that -- asked for
18 information. And that was back on August 27th.

19 Do you not have that?

20 MS. HOLMES-BOWIE: I don't have that.

21 THE COURT: There's a letter from Mr. Moench to Dale
22 Finch, Director of Licensing & Inspections, that's number ECF
23 number 1, page 18, August 27, 2024.

24 And Mr. Moench says in the third paragraph, "Finally,
25 my clients demand a hearing prior to any suspension, as

1 referenced in your letter. In advance of that hearing, my
2 clients demand that you provide any documents, evidence, or
3 other basis to support your justification for taking action
4 against 24/7 Food Mart's Mercantile License."

5 You've never saw that until today?

6 MS. HOLMES-BOWIE: No, Judge, I did not.

7 THE COURT: They're certainly entitled to that
8 information. Right?

9 MS. HOLMES-BOWIE: Yes.

10 THE COURT: Prior to a hearing?

11 MS. HOLMES-BOWIE: Yes. To the extent the City can
12 provide it.

13 THE COURT: Of course, of course. Privilege,
14 confidentiality and all those things aside. Public -- well,
15 the police report would certainly be a public document that
16 you can provide to them. Right?

17 MS. HOLMES-BOWIE: Yes. There may be certain, I'm
18 sure, redactions, but...

19 THE COURT: Certain what?

20 MS. HOLMES-BOWIE: There may be certain redactions
21 that would be, you know, otherwise confidential, identifiers,
22 that kind of...

23 THE COURT: I'm going to put in my order that you
24 provide those documents responsive to Mr. Moench's request by
25 Friday, close of business on Friday, September 6th.

1 When did you want to file your follow-up brief?

2 MR. MOENCH: Judge, I can file it whenever Your Honor
3 wants.

4 THE COURT: Monday?

5 MR. MOENCH: I can file it Monday, Judge.

6 THE COURT: Okay. File a brief by Monday. That's a
7 supplemental brief.

8 I presume that as part of it you're going to move to
9 find the code unconstitutional. Please do your homework and
10 give me some good cases.

11 You as well, Ms. Holmes-Bowie.

12 And then, Ms. Holmes-Bowie, why don't you file your
13 response by the 13th. That should give you an equal amount of
14 time.

15 We're going to get back together September 17th at
16 3:00 p.m.

17 If you want to present testimony, please advise my
18 courtroom deputy who you're going to present and just file a
19 letter with any kind of summary of the testimony that you
20 expect. All right?

21 Anything further, Mr. Moench?

22 MR. MOENCH: Judge, just on the brief, you mentioned
23 the argument, the unconstitutionality ordinance. I would also
24 plan on raising issues with the actual suspension.

25 THE COURT: Yes. Of course.

1 MR. MOENCH: I just want to make sure I cover both.

2 THE COURT: Of course.

3 MR. MOENCH: Thank you.

4 THE COURT: We've done a bit of research here.

5 Ms. Holmes-Bowie, I would refer you to a case,

6 *Cloister East, Inc. v. New York State Liquor Authority.*

7 That's 483 F. Supp. 3d 221, Southern District of New York in

8 2020.

9 And *Padberg, P-A-D-B-E-R-G, v. McGrath-McKechnie,*

10 *M-C-K-E-C-H-N-I-E*, 108 F. Supp. 2d 177 (2000).

11 I think, Ms. Holmes-Bowie, that will give you a good
12 roadmap as to your further discussions with Atlantic City and
13 what I think that they should do. And I think you're reading
14 between the lines of what I'm saying.

15 MS. HOLMES-BOWIE: Yes, Judge.

16 THE COURT: Okay. Anything further for you, ma'am?

17 MS. HOLMES-BOWIE: No, sir.

18 THE COURT: Okay. Thank you very much. We're off
19 the record.

20 Let me see counsel in my conference room for a
21 second.

22 COURTROOM DEPUTY: All rise.

23 (A recess occurred at 2:45 p.m. to 2:51 p.m.)

24 THE COURT: We're back on the record.

25 I took an opportunity to have a discussion with

1 counsel, and I think it would be beneficial for both parties
2 to be able to have some discussion amongst each other to try
3 to resolve this matter.

4 So I'm going to direct the parties and their
5 representatives with settlement authority to meet in person
6 and make a good faith attempt to resolve this matter. And
7 that could be done on or before September 11th. That's next
8 Wednesday.

9 But your brief will still be due, sir, on that Monday
10 beforehand.

11 So I will direct the parties to at least give a good
12 faith effort, meet in person by on or before September 11th.

13 Okay?

14 MR. MOENCH: Thank you, Judge.

15 MS. HOLMES-BOWIE: Thank you, Judge.

16 THE COURT: All right, everybody. We're off the
17 record. Have a good day, everybody.

18 COURTROOM DEPUTY: All rise.

19 (Proceedings adjourned at 2:52 p.m.)

20 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**

21 I certify that the foregoing is a correct transcript
22 from the record of proceedings in the above-entitled matter.

23

24 /s/ Ann Marie Mitchell 25th day of September, 2024
25 CCR-RDR-RMR-CRR
Court Reporter/Transcriber